

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

THOMAS E. NEAL,

Petitioner,

v.

CIVIL ACTION NO. 5:02-0367

MARTY C. ANDERSON,¹
WARDEN, F.C.I. BECKLEY,

Respondent.

ORDER

By Standing Order entered on December 28, 2001, and filed in this case on April 24, 2003, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on June 1, 2005, and proposed that this court (1) confirm and accept the Magistrate Judge's findings contained within his Proposed Findings and Recommendation, (2) deny petitioner's Motion Requesting an Order Issue Stating Execution and Commencement of Sentence Imposed (Docket No. 8), (3) dismiss petitioner's

¹ When petitioner filed this civil action, Joyce K. Conley was serving as Warden of FCI Beckley. Marty C. Anderson has since been designated as Warden of FCI Beckley. Accordingly, pursuant to Rule 25(f) of the Federal Rules of Civil Procedure, Marty C. Anderson has been substituted as the party Respondent in this civil action.

application (Docket No. 1) with prejudice, and (4) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). Moreover, this court need not conduct a de novo review when a petitioner "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). No objections were filed in this case.

Here, petitioner timely filed objections to the Magistrate Judge's Proposed Findings and Recommendations. In his objections, petitioner protested that he "still contends that his federal sentence was unlawfully interrupted and was thereby illegally executed" and that he had not received the "order issued stating execution of sentence imposed" in violation of his rights under the Fifth Amendment to the United States Constitution. These objections are "general and conclusory" as discussed in Orpiano in that they do not direct the district court to any specific errors in the Proposed Findings and Recommendations and instead only

restate arguments contained in petitioner's earlier pleadings. See 687 F.2d at 47. As such, the court need not conduct de novo review.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) CONFIRMS and ACCEPTS the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) DENIES petitioner's Motion Requesting an Order Issue Stating Execution and Commencement of Sentence Imposed (Docket No. 8), and (3) DISMISSES petitioner's application (Docket No. 1) with prejudice.

The Clerk is directed to remove this action from the active docket of this court. The Clerk is further directed to forward a certified copy of this Order to all counsel of record and the plaintiff, pro se.

IT IS SO ORDERED this 7th day of September, 2005.

ENTER:

A handwritten signature in dark ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge